



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2005

Mr. Miguel A. Saldaña
Law Office of Miguel A. Saldaña
Three North Park Plaza
Brownsville, Texas 78521

OR2005-00430

Dear Mr. Saldaña:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 219177.

The Brownsville Independent School District (the "district"), which you represent, received a request for a copy of a letter between two students. You claim that the requested information is excepted from disclosure under sections 552.026, 552.101, 552.111, 552.114, 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that you have submitted a second record in addition to the requested letter. Because this record is not responsive to the instant request for information, this ruling does not address the public availability of it. *See generally* Gov't Code § 552.301 (indicating that this office has authority to render decisions only with respect to information sought by written request).

You assert that the responsive submitted information constitutes student education records that must be withheld. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that is made confidential by the Family Educational Rights and Privacy Act of 1974 ("FERPA"). *See* 20 U.S.C. § 1232g. FERPA provides that no federal

funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Section 552.026 of the Government Code provides that "information contained in education records of an educational agency or institution" may only be released under the Act in accordance with FERPA.

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

We note that federal law requires that education records be made available to a student's parent or representative to the extent that the records pertain to that student. *See* 20 U.S.C. § 1232g(a)(1)(A) (granting parents affirmative right of access to their child's education records). However, a parent does not have a right of access to another student's information unless authorized by that student's parent. *See id.* 1232g(b)(1) ("[i]f any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student . . . ") Thus, information pertaining to other students must be withheld from required public disclosure under FERPA to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). Such information includes a student's handwritten comments because they make the identity of a student easily traceable through handwriting, style of expression, or the particular incidents related. Open Records Decision No. 224 (1979).

We determine that the submitted information consists of education records that are subject to FERPA and may only be released in accordance with federal law. In this instance, the requestor is the parent of one of the students to whom the submitted record pertains. Accordingly, the requestor has a right of access to this student's information. However, the submitted responsive information consists entirely of a note handwritten by a student to whose education records the requestor has no right of access. Further, the request for information reflects that the requestor knows the identity of the student. We therefore find that withholding only the name of this student would not suffice to avoid the release of personally identifiable information contained in education records as mandated by FERPA. Therefore, we conclude that the submitted information must be withheld in its entirety under section 552.101 in conjunction with FERPA. As our ruling on this issue is dispositive, we do not reach your remaining arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "L. Joseph James".

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 219177

Enc. Submitted documents

c: Ms. Tina Diaz
375 Media Luna Road #3008
Brownsville, Texas 78521
(w/o enclosures)